



MEETING DATE: 09-18-2006

AGENDA ITEM: 5

COUNCIL AGENDA REPORT

DATE: SEPTEMBER 15, 2006

TO: MAYOR AND TOWN COUNCIL

FROM: ORRY P. KORB, TOWN ATTORNEY *OK*

SUBJECT: ADOPT RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DENYING AN APPEAL OF A DETERMINATION OF THE PLANNING COMMISSION OF THE TOWN OF LOS GATOS THAT THE OPERATIONS OF THE LAST CALL BAR ARE DETRIMENTAL TO THE PUBLIC HEALTH AND SAFETY AND CONSTITUTE A NUISANCE AND AMENDING THE CONDITIONS OF APPROVAL PURSUANT TO LOS GATOS TOWN CODE SECTION 29.20.315

RECOMMENDATION:

Adopt resolution confirming Council's decision on September 5, 2006:

DISCUSSION:

On September 5, 2006, Council denied an appeal of a Planning Commission decision amending the conditions of approval based on a determination that the operations of the Last Call bar are detrimental to public health and safety and constitute a nuisance. Furthermore, Council amended condition No.7 of the Amended Conditions of Approval regarding hours of operation. The attached resolution confirms that decision.

Subsequent to Council's last general meeting, the Town received correspondence from the business owners for 2fabulous Salon and Spa dated August 18, 2006, but not received until September 11, 2006. A copy of this letter is attached.

Attachments:

1. Resolution
2. August 18, 2006 letter from 2fabulous Salon & Spa

PREPARED BY: ORRY P. KORB, TOWN ATTORNEY

OPK:LMB/wp [N:\MGR\AdminWorkFiles\Town Attorney\Council Reports\9-18-06 Last Call Council Report.wpd]

Reviewed by: _____ Town Manager *PSJ* Assistant Town Manager _____ Clerk
_____ Finance _____ Community Development

Rev: 9/15/06 4:10 pm

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File# 301-05

RESOLUTION

RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF LOS GATOS DENYING AN APPEAL OF A DETERMINATION OF THE PLANNING COMMISSION OF THE TOWN OF LOS GATOS THAT THE OPERATIONS OF THE LAST CALL BAR IS DETRIMENTAL TO THE PUBLIC HEALTH AND SAFETY AND CONSTITUTES A NUISANCE AND AMENDING THE CONDITIONS OF APPROVAL PURSUANT TO LOS GATOS TOWN CODE SECTION 29.20.315

APN: 529-07-046
CONDITIONAL USE PERMIT: U-94-44
PROPERTY LOCATION: 408 N. Santa Cruz Ave.

WHEREAS:

A. This matter came before the Town Council for public hearing on September 5, 2006 on an appeal by Cynthia Goguen (appellant), the owner of Goguen's Last Call (the "Bar"), from a decision of the Planning Commission as was regularly noticed in conformance with State and Town law.

B. Council received testimony and documentary evidence from the appellant and all interested persons wishing to testify or submit documents. Council considered all testimony and materials submitted, including the record of the Planning Commission proceedings and the packet of material contained in the Council Agenda Report dated August 15, 2006, along with subsequent reports, correspondence and materials prepared concerning this matter.

C. This matter came before the Town Planning Commission for public hearing on June 14, 2006, at the direction of the Commission given on May 10, 2006, in response to a request by the Director of Community Development made pursuant to Town Code section 29.20.310. The public hearing was continued to June 28, 2006.

D. The Commission received testimony and documentary evidence from Town staff, the appellant and appellant's representatives, and all interested persons who wished to testify or submit documents. The Commission considered all testimony and materials submitted.

E. The Bar is located at 408 N. Santa Cruz Ave. It was granted a Conditional Use Permit on or about February 1994, which allowed for the sale of alcohol for on-site consumption without food service and approved hours of operation from 6:00 a.m to 2:00 a.m. seven (7) days per week.

F. Los Gatos Town Code section 29.20.315 provides that, after a hearing held pursuant to Town Code section 29.20.310, the Planning Commission may revoke or modify a zoning approval if it finds that zoning approval was obtained by fraud, or if it finds violations of conditions of approval, or if the use is exercised in a manner that is detrimental to the public health or safety, or constitutes a nuisance.

G. Town staff recommended that the Commission revoke the Bar's use permit pursuant to Town Code section 29.20.315(a)(3). The recommendation was based on the following points:

1. The Bar has repeatedly permitted the sale of illegal controlled substances (drugs).
2. The Bar has repeatedly sold or stocked for sale contaminated alcoholic beverages.
3. The operation of the Bar has led to an inordinate and outrageous number of calls for service.

4. The Bar has been operated as a disorderly house and has had its license to sell alcoholic beverages revoked or suspended by the State Department of Alcoholic Beverage Control, with a 30-day suspension served in January/February of 2006.

5. The Bar, by its operation, has attracted a substantial number of transients who have loitered behind the premises in an area adjacent to the public parking lot, creating an aura of a threat to personal safety, creating unsightly blight and litter, resulting in public urination and public exposure, and creating conditions requiring cleanup by Town crews at public expense.

H. The Planning Commission found pursuant to Town Code section 29.20.315(a)(3) that the Bar has so exercised its use permit as to be detrimental to the public health and safety, and has constituted a nuisance based on the following facts and supporting evidence:

1. Five (5) separate drug sales at the Bar were witnessed by undercover narcotic agents between August 2003 and June 2004. One of the sales involved an employee of the Bar.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Stipulated facts by Cynthia Goguen, owner of the Bar, Findings of Fact supporting the Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the State Department of Alcoholic Beverage Control ("ABC") (attachment to Exhibit C to staff report dated June 8, 2006).

2. Since November 1999 to May 18, 2006, there have been 1,218 calls for police service at the Bar. 189 of those are considered by the Police Department to be serious calls for service requiring, at a minimum, response by two officers. These include, but are not

limited to, robbery, assault with a deadly weapon, active fights, domestic violence, drunk in public and narcotic sales. The majority of these types of calls occur after 10:00 p.m. For example, eight (8) out of 17 calls concerning battery occurred after midnight, all six calls concerning assault with a deadly weapon occurred after 10:45 p.m., 20 out of 30 calls concerning verbal arguments occurred after 11 p.m., and 14 of 15 calls concerning physical fights occurred after 11:45 p.m.

While the total number of calls for the Bar is exceeded by the number of calls associated with at least one other bar in or about the Central Business District, that bar, known as Mountain Charley's, is significantly larger than the Bar. In other words, the number of calls for service at the Bar, particularly serious calls for service, are excessive and out of proportion for a business of its size. In addition, the trend of serious calls for service at the Bar have stayed the same or increased from year to year while those for other establishments serving alcohol have decreased over the same period.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Memorandum dated June 27, 2006, from Captain Alana Forrest to Randal Tsuda, Assistant Community Development Director (Exhibit R to the desk item dated June 28, 2006); June 14, 2006 testimony of Captain Alana Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

3. Numerous inspection reports from the Santa Clara County Public Health Department document problems at the Bar, including seven (7) occasions beginning on December 10, 2002 and ending on March 1, 2006, when bottles of liquor were found to be contaminated with insects or other foreign materials, low alcohol levels were detected, violations

were discovered of rules associated with food protection and storage, water and waste handling, bathroom maintenance and utensils and equipment handling. Two (2) other reports concern overdue account balances and an overdue environmental permit. On at least two occasions, the Bar owner personally observed and permitted dice games to be played for money in violation of Penal Code section 330(a).

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Stipulated facts by Cynthia Goguen, owner of the Bar, Findings of Fact supporting the Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

4. On December 1, 2005, the ABC determined that cause for disciplinary action exists under Article XX, section 22 of the California State Constitution, Business and Professions Code section 24200.5, subsection (a) and Business and Professions Code section 24200, subsections (a) and (b). The ABC ordered the Bar license to be revoked, stayed the revocation for a period of three (3) years, and ordered that the license be suspended for a total of 30 days.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

5. The Bar is incompetently managed, in that the Bar lacks experienced full time management, the Bar owner is inexperienced in operating a bar and is employed elsewhere

in a different capacity, and key personal are hired without background checks and are not provided adequate training.

Evidence: Decision dated December 1, 2005, of Administrative Law Judge Stewart A Judson, regarding the Bar's license issued by the ABC (attachment to Exhibit C to staff report dated June 8, 2006).

6. The Bar did not fully and appropriately cooperate with the Police Department. The Bar's owner questioned routine police bar checks, made baseless complaints against police officers and police sergeants and complained about police cars in the Bar parking lot. While there was no evidence of a formal warning to the Bar issued by the Police Department, there is evidence of numerous contacts between the Police Department regarding inappropriate and illegal activities at the Bar.

Evidence: Memorandum dated May 31, 2006, from Scott R. Seaman, Chief of Police, to Bud Lortz, Community Development Director (Exhibit C to staff report dated June 8, 2006); June 14, 2006 testimony of Captain Alana Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

7. Noise resulting from late night operations of the Bar, including dumping trash and bottles after midnight, disturbed nearby residents.

Evidence: June 14, 2006 testimony of Mark Forsythe to the Planning Commission; June 14, 2006 testimony of Kevin Shams-Shirazi to the Planning Commission.

8. The operations of the Bar have contributed to a problem of transients congregating in the area behind the Bar and adjacent businesses by allowing some transients to store property in the Bar and by allowing some transients to perform odd jobs for the Bar.

Evidence: June 14, 2006 testimony of Captain Alan Forrest to the Planning Commission; June 28, 2006 testimony of Scott R. Seaman, Chief of Police, to the Planning Commission.

9. Pursuant to Town Code section 29.20.190, modification of the conditions of approval of the Bar is essential or desirable to the public convenience or welfare in that the amended conditions are intended to address the problems in the operations of the Bar which resulted in the forgoing action against the existing CUP; the modifications of the conditions of approval of the Bar will not impair the integrity and character of the zone but, instead, address the negative aspects of the Bar's operations; the modifications of the conditions of approval of the Bar will not be detrimental to public health, safety or general welfare but, instead, address the negative aspects of the Bar's operations; and the modifications of the conditions of approval of the Bar are in harmony with the various elements or objectives of the General Plan and the purposes of the Town Code; to wit, they address the negative aspects of the Bar's operations.

10. Pursuant to Section IV. B of the Redevelopment Plan for the Central Los Gatos Redevelopment Project, the modifications of the conditions of approval of the Bar meet the use set forth in the Town's General Plan, in that the Bar will continue to operate as a permitted commercial use in the C-1 Neighborhood Commercial Zone.

I. The Planning Commission determined based on the above findings that the Bar's use permit should be modified by the addition of 19 new conditions of approval. These conditions included condition No. 7 requiring that the all operations end at 11 p.m. on weekdays and midnight on weekends. This modification was made on the recommendation of Town staff and pursuant to the Town Alcohol Policy (Resolution No. 2001-106). The Alcohol Policy provides that the hours of operation for new or modified use permits for alcohol service shall not

exceed 11 p.m. on weekdays, except for holidays and evenings before holidays, and 1 a.m. on weekends, holidays or evenings before holidays. Establishments with a use permit in good standing may continue to operate under existing later hours of operation. In considering applications for use permits, service after 10 p.m. cannot be approved unless the deciding body finds that (i) late night service will not adversely impact adjacent residential neighborhoods; (ii) the applicant does not have a history of complaints and noncompliance with local ordinances or the Alcohol policy; and (iii) the applicant has demonstrated a clear benefit to the community. The Commission concluded that the Alcohol Policy required that the hours of operation of the Bar be changed due to the modification of the Bar's use permit pursuant to Town Code section 29.20.310. The Commission further determined that the findings required to operate past 10 p.m. are not applicable to a bar whose use permit is modified pursuant to section 29.20.310.

J. The appeal is made on grounds that the Planning Commission misinterpreted evidence, made unsupported findings, disregarded exculpatory evidence, misinterpreted the existing use permit, and falsified evidence, that the appellant was denied exculpatory evidence in the form of police reports concerning other bars, and that the Town exceeded jurisdiction regarding contaminated alcohol. The testimony and correspondence of the Bar's representative establish that appellant's primary concern is condition No. 7 (hours) and its economic impact. Secondary concerns are raised regarding condition No. 8 (security plan) and condition No. 11 (monthly meetings with police).

K. The Town Council finds as follows:

1. The decision of the Planning Commission was correct in all respects except with regard to the interpretation of the Alcohol Policy, which, as explained below, Council concludes requires that the findings necessary to operate after 10 p.m. are applicable to a

bar whose permit is modified pursuant to section 29.20.310. The findings of the Planning Commission and supporting evidence detailed herein above are adopted by Council and fully incorporated herein in support of this finding. Additional findings by Council follow.

2. The Bar is a public nuisance due to repeated incidents of disturbances of the peace, public drunkenness, assault and battery, and domestic violence occurring over the period from 1999 to the present.

Evidence: Los Gatos-Monte Sereno Police Department reports for the period between 1999 and 2006 detailing incidents requiring police response at or in the vicinity of the Bar, arising out of the operations of the Bar; Staff Report dated August 15, 2006; Staff Report dated August 31, 2006 and Attachments 14, 15 and 16 thereto; September 5, 2006 testimony of William Conners and Scott Seaman to the Town Council.

3. The number of serious calls for police service (i.e., requiring two or more police officers) at or concerning the Bar is disproportionate to the size of the Bar as measured with reference to the number of permitted seats. The Bar, which is permitted 45 seats, has 44% more serious calls for police service as compared to Mountains Charley's, which is permitted 110 seats and where music and dancing are permitted. Dancing and music are not permitted at the Bar. The Bar generates between 324% and 1036% more serious calls for police service as compared to the Boulevard Tavern, which is permitted 66 seats, the Black Watch, which is permitted 55 seats, and Carrie Nations, which is permitted 45 seats.

Evidence: Los Gatos-Monte Sereno Police Department reports for the period between 1999 and 2006 detailing incidents requiring police response at or in the vicinity of the Bar, arising out of the operations of the Bar; Staff Report dated August 15, 2006; Staff Report

dated August 31, 2006 and Attachments 14, 15 and 16 thereto; September 5, 2006 testimony of William Connors and Scott Seaman to the Town Council.

4. The Town Alcohol Policy provision requiring findings in the Policy required to allow alcohol service after 10 p.m. applies to a permit modification pursuant to Town Code section 29.20.310 and the findings cannot be made with regard to the Bar. The Policy does not state that the findings required to operate after 10 p.m. applies to the modification of a use permit, whether or not involuntary (e.g., pursuant to section 29.20.300). Nevertheless, the findings requirement was intended and should apply to an involuntary modification. Town Code provisions regarding use permits apply equally to applications for new use permits and modifications of existing use permits (e.g., Town Code section 29.20.195). The Code does not specify a different set of rules for involuntary modifications resulting from a recommendation to revoke or modify an existing use permit. Therefore, in the absence of clear language to the contrary, it is apparent that all provisions of the Alcohol Policy were intended to apply to modifications of existing use permits as well as to applications for new use permits. In addition, the intent of the Alcohol Policy provisions concerning late night operations is to require a bar with a history of problems to cease operations after 10 p.m. It is illogical to differentiate between troublesome bars solely on the basis of whether one has applied for a new use permit while the other is subject to an involuntary proceeding to revoke or modify its use permit. It is equally illogical for the bar in the latter situation to be permitted more favorable hours of operation. Consequently, the Planning Commission's determination to the contrary must be modified pursuant to Town Code section 29.20.300 because it constitutes an issue or policy over which the Commission did not have discretion to modify or address, but which is vested in the Council for modification or decision.

5. The history of late night incidents resulting in serious calls for police service provides independent support for the decision to require the Bar to close at 10 p.m. Appellant's claim of an extreme negative financial impact resulting from earlier closing hours relies solely on the bare testimony of the Bar's attorney, Kent Washburn. Appellant failed to provide any financial evidence supporting this argument.

6. The appellant failed to demonstrate that it is subject to discriminatory or selective enforcement. There is no evidence that the Bar has been deliberately and intentionally singled out because of some unjustifiable standard or in the exercise of protected rights and in a manner which has no rational or legitimate law enforcement interest.

7. The appellant's assertion that there is no evidence of current violations does not detract from its long history of numerous serious violations, the evidence of which was uncontested by the appellant. Given that history, Council is naturally skeptical about whether the Bar can operate without being a nuisance. Nevertheless, subject to additional conditions of approval necessary to address these problems, Council is willing to allow the Bar one last chance to continue operations.

8. The appellant offered no evidence or authority to support its bare assertion that the Town exceeded its jurisdiction regarding contaminated alcohol. State laws governing alcohol sales do not preempt the Town from exercising its zoning authority to regulate nuisances. *Korean Am. Legal Advocacy Foundation. v. City of Los Angeles*, 23 Cal. App. 4th 376 (1994).

RESOLVED:

1. Conditions of approval attached hereto and incorporated herein by this reference as Exhibit "A" are hereby adopted as the Amended Conditions of Approval of this permit.

2. The decision constitutes a final administrative decision pursuant to Code of Civil Procedure section 1094.6 as adopted by section 1.10.085 of the Town Code of the Town of Los Gatos. Any application for judicial relief from this decision must be sought within the time limits and pursuant to the procedures established by Code of Civil Procedure section 1094.6, or such shorter time as required by State and Federal Law.

PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Los Gatos, California held on 18th day of September 2006 by the following vote.

COMMISSION MEMBERS:

AYES:

NAYS:

ABSENT

ABSTAIN:

SIGNED:

MAYOR
TOWN OF LOS GATOS, CALIFORNIA

ATTEST

CLERK ADMINISTRATOR
TOWN OF LOS GATOS, CALIFORNIA

CONDITIONS OF APPROVAL

408 N. Santa Cruz Ave.
Conditional Use Permit U-94-44

TO THE SATISFACTION OF THE DIRECTOR OF COMMUNITY DEVELOPMENT AND THE CHIEF OF POLICE:

1. PREVIOUS CONDITIONS: These conditions of approval shall supercede all previously adopted conditions.
2. IMPLEMENTATION OF CONDITIONS: Unless otherwise stated herein, the business owner shall implement and maintain compliance with all conditions of approval within 30 days of final action on this Conditional Use Permit. The applicant shall submit a written document to the Director of Community Development indicating how compliance with each condition has been implemented.
3. NUMBER OF SEATS: The number of seats shall not exceed 45.
4. ALCOHOLIC BEVERAGES: The on-site service of alcoholic beverages is permitted.
5. HEALTH DEPARTMENT INSPECTIONS: Arrange to have the Santa Clara County Environmental Health Department inspect the bar for contaminated alcohol and other code violations on a monthly basis at the bar's expense. Provide documentation of this arrangement to the Town. With approval of Health Department, the business owner may utilize the services of Al Sweedler to perform contamination inspections every other month (alternating with Health Department) and shall submit the inspection logs to the Police Department quarterly.
6. SECURITY LIGHTING: Install security lighting along the back of the bar.
7. HOURS OF OPERATION: The approved hours of operation are 6:00 A.M. to 10:00 P.M. seven days per week..
8. SECURITY OPERATIONS: The business owner shall submit a security plan for approval of the Chief of Police. The plan shall include items such as the name of the security firm, hours when security personnel are present, areas to be secured, problems to be abated, and the number of security personnel.
9. NEIGHBORHOOD MEETING: The business owner shall hold a neighborhood a minimum of two times per year to address impacts including noise, intoxication, urination, littering, attraction of transients, and safety. The business owner shall send notification of the neighborhood meeting to all property owners and occupants within 300 feet of the subject parcel. Notification shall also be sent to the Director of Community Development and Chief of Police. Town staff will attend the meetings.
10. MAINTENANCE OF REAR AREAS: The business owner shall implement a one-time clean-up of the Northside Parking Lot as specified in the attachment to the letter from Kent Washburn dated June 23, 2006 (Exhibit Q of the Planning Commission Desk Item dated June 28, 2006.
11. MONTHLY MEETINGS WITH POLICE: The business owner and bar managers shall meet with the Police Department at the Police Department monthly to discuss operational issues, resolve complaints, and review compliance with conditions. The Department may designate a contact person for the business owner to deal with at the Department's discretion.

12. LOITERING: The business owner shall take measures to eliminate loitering behind the bar by means such as the following: calling the Police Department, asking loiterers to leave, locking all trash receptacles and locking the rear door at all times. The bar shall not hold or store items for any person who is not a customer inside the bar.
13. SECURE DUMPSTER: Lock the dumpster to prevent theft of recyclables, rummaging through bottles for left over alcohol, etc. No dumping of trash or bottles between 9:00 p.m. and 8:00 a.m.
14. BAR MANAGER: The business owner shall employ professional bar manager(s) whose qualifications and background shall be reviewed and approved by the Chief of Police prior to hire. The Chief of Police shall review the bar manager's knowledge of bar operations, applicable laws and have no criminal convictions related to drugs, alcohol or violent crimes.
15. TRAINING RECORDS: Provide a list of all current employees and document training of all employees on safety, alcohol, and service topics.
16. LAST CHANCE AGREEMENT: The bar owner shall enter into a "Last Chance Agreement" with the Town where the owner admits past negligent operation and creation of a nuisance, and wherein any proven violation of any condition for a period of three (3) years shall result in immediate revocation of CUP without any right to a hearing or appeal (except with respect to whether or not a violation of a condition has occurred). The agreement shall require that the business owner reimburse the Town for staff time incurred at the Planning Commission meetings and for all attorney costs incurred in the abatement of the nuisance. The reimbursement cost shall not exceed the Town of Los Gatos' current application fee for a Conditional Use Permit.
17. REIMBURSEMENT FOR FUTURE COSTS: The business owner shall annually reimburse the Town for all documented staff time and attorney costs incurred to implement the conditions of approval and monitor ongoing compliance with the conditions. The reimbursement cost shall not exceed the Town of Los Gatos' current application fee for a Conditional Use Permit. The business owner shall reimburse the Town within 30 days of delivery of invoice.
18. FUTURE NUISANCES: Should future operation of the bar create a nuisance situation, whether any conditions are violated or not, Town shall have the right to undertake a proceeding to revoke the CUP and may use any past evidence of negligent operation or nuisances in the future proceeding (including evidence presented in this revocation proceeding).
19. ALCOHOL POLICY: The business owner shall implement the following requirements of the Town's Alcohol Policy:
 - a. This establishment shall use an employee training manual that addresses alcoholic beverage service consistent with the standards of the California Restaurant Association.
 - b. The licensed operator shall have and shall actively promote a designated driver program such as complimentary non-alcoholic beverages for designated drivers.
 - c. Taxicab telephone numbers shall be posted in a visible location.



RECEIVED

SEP 11 2006

MAYOR & TOWN COUNCIL

August 18, 2006

The Honorable Diane McNutt
Mayor Town of Los Gatos and Members of Town Council
Town of Los Gatos
P.O. Box 949
Los Gatos, CA 95031

Re: Appeal of the Last Call; Council Agenda—August 21, 2006

Dear Mayor McNutt and Members of the Town Council:

My wife and I have recently established a hair salon and spa, 2fabulous, at 420 N. Santa Cruz Avenue in the Los Gatos Shopping Center, also the location of Last Call. We are close to the center of the shopping center, not far from Last Call.

Since establishing our business in September 2005, we have noticed many individuals, that we believe are customers of Last Call, who are loitering in the area, and in some cases, in what appears to be an intoxicated condition. In one instance, one of our staff who was working late in the evening, asked me to escort her to her car because of her concern about an individual who was hanging around in the parking lot near 2fabulous.

We are open until 9 PM and, sometimes our customers and staff leave around 10 PM, following late evening appointments. With patrons of Last Call "hanging out" in the parking lot, we have an environment that is not conducive to our clientele and staff feeling safe and secure. Having Last Call near-by is also inconsistent with the upscale image that we are working to create and which our clients appreciate.

In summary, while we have no ill wishes toward the owner of Last Call, we do not feel that this establishment represents the type of business neighbor that is compatible with the business climate that we are seeking to develop.

Thank you for your consideration.

Yours truly,

A handwritten signature in black ink, appearing to read "A. William Musgrave, Jr.".

A. William Musgrave, Jr.

A handwritten signature in black ink, appearing to read "Kristina S. Musgrave".

Kristina S. Musgrave

Unveiling the 2fabulous in you!

420 N. Santa Cruz Ave Los Gatos, CA 95030 Phone (408) 395-2300 Fax (408) 399-3387
www.2fabsalon.com

ATTACHMENT 2